IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6145 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAUDHARY RATANBEN KANJIBHAI

Versus

GORDHANBHAI PATEL

Appearance:

Mr. Suthar for MR PK JANI for Petitioner

MR AD OZA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/09/2000

ORAL JUDGEMENT

Learned advocate Mr. Suthar is appearing for the petitioner. Learned advocate Mr. Deepak Dave has appeared for Mr. A.D. Oza for the respondent Board. This petition was admitted by this court on 6.5.1992 by issuing rule thereon and it was made returnable on 7th July, 1992.

In this petition, the petitioner has prayed for the relief that the respondents be directed to declare that the petitioner has passed the New SSC Examination held in the month of March, 1987 of which her seat no. was D.68643. The petitioner has also prayed for quashing and setting aside the mark sheet issued to her by the respondent board at annexure "B" which declares the petitioner as having failed.

The facts of the present petition, in brief, are that the the petitioner was studying in Std. VIII in the year 1982. However, in view of her father's sad demise, she had left the studies. Thereafter, her family members advised her to prosecute study and, therefore, in the year 1987, when the petitioner completed the age of 18 years, she sought the permission to appear in the said examination which was to be held in March, 1987. The petitioner was given registration number by the board being regi. no. 18869. The petitioner had filled in her form through Pragati Vidyalaya of village Dhota and had selected the following subjects namely (1) Gujarati, (2) Hindi, (3) Social Studies, (4) Manav Jivan Vignan, (5) Arithmatic,(6) Sanskrit and (7) Physical Training. Then, the petitioner accordingly appeared in the said examination, in all the subjects vide seat no. D.68643 from Vadgam Centre. It is her case that she had appeared in the said examination as an external candidate. The results of the said examination were declared on 27th June, 1987 wherein the petitioner was declared to have failed. When her uncle saw the mark sheet, in the mark sheet, subject of physical training was neither shown nor referred to and it was stated as if the petitioner had appeared only in six subjects. Having come to know about this fact, her uncle approached the respondents no.1 and 2 and inquired as to why the petitioner's mark in the said subject of physical training has not been noted and ultimately, in view of such inquiries and approach of her uncle before the respondents no.1 and 2, the petitioner was declared as passed after giving marks in the said subject by issuing mark sheet by the board on 4.7.1987. On 7.7.1987, the petitioner was given the certificate by the principal of the school that she has passed the SSC Examination. Thereafter, on 2.9.1987, the petitioner received letter from the board wherein it was stated that as per the rules, a private candidate cannot take the subject of physical education and the petitioner has opted for the said subject and, therefore, petitioner's said subject has been treated as cancelled and, therefore, the mark sheet dated 4.7.1987 issued in her favour stands cancelled. Thereafter, she was asked to

hand over the mark sheet of New SSC by the head master of the school. Thereafter, the petitioner has made several representations and has also approached the respondents but of no avail and, hence, she has approached this court by means of this petition.

The respondent Board has filed detailed affidavit in reply and has disputed the averments made by the petitioner. It has been pointed out by the Board that if any candidate has to appear at the new SSC Examination as an external candidate, then, such candidate has to select only seven subjects. It is contended that the external candidate cannot take any subject where the practical are required. The petitioner had offered said subject as one of the subjects at the said examination. If the candidate has taken subject, then, the candidate cannot be declared as passed, as an external candidate. The respondents have further submitted that minimum seven subjects are compulsory to be taken at the SSC Examination. It has been specifically contended that as the petitioner had opted for the subject of physical training, as an external candidate and since she had taken only seven subjects at the said examination, she was declared to have failed and her mark sheet showing her to have passed was cancelled. According to the respondents, as per clause 4, in any subject wherein practical work is required to be performed during the course of the year or where field work is required to be done, candidate cannot offer those subjects. Therefore, the petitioner as an external candidate cannot take such subject and cannot appear with such subject and in this case, the petitioner has appeared in the said subject of physical training for which she has no right under the rules. It is further submitted that the school authorities are also informed in this regard time and again and still however error has been committed and in such circumstances, the Board has no other option but to declare her failed at the said examination. In view of such contentions, the respondents have prayed for dismissing this petition.

I have heard the learned advocates for the respective parties. Learned advocate Mr. Suthar has submitted that the cancellation of the result of examination by the respondent Board on the ground of ineligibility of the petitioner for opting the physical training as a subject is illegal. He has submitted that the respondents, having permitted the petitioner to opt the said subject and having declared her passed in the said examination, are estopped from cancelling the said subject. He has submitted that looking to the facts and

circumstances of the case, principles of estoppel are clearly attracted in this case and, therefore, the respondents ought not to have cancelled the result of the petitioner and ought not to have declared her to have failed in the said examinations. He has submitted that it was the bounden duty of the school as well as the board to thoroughly scrutinise the form filled in by the petitioner before permitting the petitioner to appear at the said examination and after the petitioner has been permitted to appear, now, the result of the petitioner cannot be cancelled on that ground. In support of his submissions, he has relied upon the following decisions :

(1) In case of Sanatan Gauda versus Gaherampur University and others reported in AIR 1990 SC 1075.
(2) Km. Maxey Charan versus Rohilkhand University reported in AIR 1992 Allahabad 122.
(3) In case of Rohan R.Chauhan versus State of Gujarat reported in 1996 (1) GLH 926.

In all the aforesaid cases, the principles of estoppel has been examined by the apex court, Allahabad High Court and this court. The apex court has observed that this is apart from the fact that in the present case, the appellant while securing his admission in the law college had admittedly submitted his mark sheet alongwith an application for admission and was admitted by the college and thereafter, he prosecutes his studies for two years and was also granted admission for pre law and inter mediate law examination and was permitted to the final year of the course. It is only at the stage of declaration of his result, the university has raised objection about his so called ineligibility to be admitted to the law course. It has been held that the university has, therefore, been estopped from refusing to declare the result of the appellant's examination or from preventing him from prosecuting his final year studies. In case before the Allahabad High court also [AIR 1992 Allahabad 122], principles of estoppel has been examined wherein the petitioner has been declared to have passed in the examination by the university and on the basis of the said result, the petitioner was admitted in the subsequent year on the basis of the mark sheet. Examination result was sought to be cancelled on the ground of mistake in the mark sheet committed by the university initially and in such circumstances, it has been held that that the university was estopped from cancelling the results. In case reported in 1996 (1) GLH 926 (supra), this court has considered the decision of

the apex court reported in AIR 1990 SC 1075. In para 7 of the report, this court has observed as under:

> "7. In this context, we may profitably refer to a decision of the Supreme Court in Sanatan Gauda v. Berhampur University reported in AIR 1990 SC 1075 in which it was held that the university was estopped from refusing to declare the result of the appellant's examination when he was permitted to appear at the pre law and intermediate examination and admitted to final year of the course. In that case, the candidate while securing his admission in the law college had admittedly submitted his mark sheet along with the application for admission but law college had admitted him and he had pursued his studies for two years. The University had also granted him the admission card for pre law and intermediate law examinations. He was permitted to appear at those examinations.It was only at the stage of declaration of his result of pre law and inter law examination that the university raised objection to his ineligibility to be admitted to the law course. It was held that the university was clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course. In the process, it was held that the plea that the principal wrongly assured the university authorities that he had verified the position and that all the candidates were eligible would not be tenable. It was observed that the principal could not be condemned for recommending the candidate of the appellant for the examination in question and it was the bounden duty of the university to have scrutinized the matter thoroughly before permitting the appellant to appear at the examination and not having done so, it cannot refuse to publish his results. Even in that case it was observed that the student was not guilty of any fraud or misrepresentation. Therefore, even on the ratio of the decision on Sanatan Gauda (supra) the University could not have cancelled the petitioner's result since there was absolutely no malpractice, fraud or improper conduct on his part. "

Relying upon the aforesaid judgment, it has been submitted that the respondents are estopped from cancelling the results of the petitioner on the alleged

ground. It has also been submitted that in this case also, it is not the case of the respondents that the petitioner has made any misrepresentation or has played fraud and, therefore, the respondents are estopped from cancelling the results.

On the other hand, learned advocate Mr. Dave appearing for Mr. Oza for the respondent board has submitted that according to the rules, the petitioner was and is not entitled to appear in the subject of physical training at the new SSC Examination as an external candidate and as such, the respondent board was right in cancelling her result. According to him, this fact was well known to the petitioner as well as the school authorities and yet, the school authority has accepted the form filled in by the petitioner but by the mistake of the board, same was not properly scrutinized and was not scanned properly and permission was granted which has been subsequently rectified by the board and the decision of the board is quite just and proper. He has, therefore, submitted that the board was right and this court should not interfere with the action of the board.

Having considered the submissions of the learned advocates for the parties, as per my view, the case before hand is covered by the decisions referred to hereinabove and now the respondents cannot raise objection against the petitioner that the petitioner was not entitled to opt for the subject of physical training in the new SSC Examination. It is a fact that the petitioner had appeared as an external candidate and was known to the school authorities as well as the board and keeping in view this fact, her application form was scrutinized and accepted and the petitioner was permitted to appear at the said examination and was also declared passed. In view of these facts, in view of the principles laid down by the apex court as well as the Allahabad High Court and this Court in aforesaid decisions, the principles of estoppel would certainly come into play and the respondents were estopped from cancelling the result of the petitioner. Therefore, the communication dated 31st August, 1988 annexure "B" is illegal, arbitrary and contrary to the principles of law and, therefore, as per my view, annexure "B" dated 31.8.1988 wherein the petitioner has been declared to have failed is required to be quashed and set aside and the respondents are required to be directed to declare that the petitioner has passed the new SSC Examination held in the month of March, 1987 on her seat No. D.68643 by letter dated 4th July, 1987 annexure "C" to the petition.

Accordingly, this petition is allowed. The communication dated 31.8.1988 annexure "B" to the petition is quashed and set aside and the respondents are hereby directed to declare that the petitioner has passed the New SSC Examination held in the month of March, 1987 on seat no. D.68643 including the subject of physical training as per letter dated 4th July, 1987 annexure "C" to the petition. The respondents are further directed to issue the mark sheet for Seat No. D. 68643 of the petitioner in favour of the petitioner including the subject of physical training as earlier declared by letter dated 4th July, 1987 that the petitioner has passed in the new SSC Examination held in March, 1987 on the aforesaid seat number. The respondents have to undertake and complete the aforesaid exercise within two months from the date of receipt of certified copy of this order. Rule is made absolute accordingly in aforesaid terms with no order as to costs.

8.9.2000 (H.K. Rathod,J.)
Vyas